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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 388

VILLAGE OF ESPANOLA, NEW MEXICO, a municipal corporation, et al., Petitioner,

vs.

YOUR FOOD STORES, INC., (NSL), a New Mexico corporation, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

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INDEX

	PAGE
OPINIONS BELOW	1
CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED	1
STATEMENT OF THE CASE	2
MATTERS AND GROUNDS WHY THE CAUSE SHOULD NOT BE REVIEWED BY THIS COURT	3
POINT I Certiorari Should Be Denied Because No Reviewable Question Is Presented By The Petition	3
POINT II Certiorari Should Be Denied Because The Decision Of The New Mexico Supreme Court Rests On An Adequate And Independent State Ground	6
POINT III Certiorari Should Be Denied Because The Question Of Whether A State Or Its Political Subdivisions May Annex Indian Lands Has Heretofore Been Determined By This Court In *Worcester vs. Georgia*, Infra, And The Decision Of The New Mexico Supreme Court Is In Accord With *Worcester* And Other Applicable Decisions Of This Court, As Well As Applicable Acts Of Congress	12
Response to Petitioner's Point I	15
Response to Petitioner's Point II	23
Response to Petitioner's Point III	25
Response to Petitioner's Point IV	28
CONCLUSION	30

INDEX (CONTINUED)

PAGE

APPENDIX A

ITEM A. Indian Reorganization Act (Wheeler-Howard Act), Act of June 18, 1934, Chapter 576, Sections 16, 18 and 19; 48 Stat. 987-988; 25 U.S.C., Indians, Sections 476, 478 and 479 34

ITEM B. Act of February 15, 1929, Chapter 216, 45 Stat. 1185, As Amended by Act of August 9, 1946, Chapter 930, 60 Stat. 962; 25 U.S.C., Section 231 36

ITEM C. Section 14-6-11 New Mexico Statutes (1953 Annotated): (Laws 1903, Chapter 105, Section 1, as Amended by Laws 1935, Chapter 53, Section 3, and Laws 1939, Chapter 204, Section 2) 37

ITEM D. Act of December 22, 1858, 11 Stat. 374, Chapter V 37

TABLE OF AUTHORITIES

CASES:

City of El Paso vs. State, 209 S.W. 2d 989 (Tex. Civ. App. 1947) 9, 22

Dean Milk Co. v. City of Madison, Wis., 340 U.S. 349, 71 S. Ct. 295, 95 L. Ed. 329 (1951) 4

Demorest vs. City Farmers Trust Co., 321 U.S. 36, 64 S. Ct. 384, 88 L. Ed. 526 (1944) 11

Garcia vs. U. S., 43 Fed. 873, C.C.A. 10 (1930) 22

Georgia Railway & Power Co. vs. Town of Decatur, 262 U.S. 432, 43 S. Ct. 612, 67 L. Ed. 1065 (1923) 10

PAGE

Herb vs. Pitcairn, 324 U.S. 117, 65 S. Ct. 459, 89 L. Ed. 789 (1945) 6, 10

Howard vs. Commissioners, 344 U.S. 624, 73 S. Ct. 464, 97 L. Ed. 617 (1953) 21, 23, 32

In re Sandia Conservancy District, 57 N.M. 413, 259 P. 2d 577 (1953) 8, 9, 10, 11

Laramie County vs. Albany County, 92 U.S. 307 at 308, 23 L. Ed. 552 (1875) 10

Lusk vs. First National Bank of Carrizozo, 46 N.M. 445, 130 P. 2d 1032 (1942) 2

Maricopa & Phoenix Railroad vs. Arizona, 156 U.S. 347, 15 S. Ct. 391, 39 L. Ed. 447 (1895) 20

Munro vs. City of Albuquerque, 48 N.M. 306, 150 P. 2d 733 (1943) 10

New York ex rel. Ray vs. Martin, 326 U.S. 496, 66 S. Ct. 307, 90 L. Ed. 261 (1946) 27

Radio Station WOW, Inc. vs. Johnson, 326 U.S. 120, 65 S. Ct. 1475, 89 L. Ed. 2092 (1945) 12

Railroad Commission of California vs. Los Angeles Railway Corporation, 280 U.S. 145, 50 S. Ct. 71, 74 L. Ed. 234 (1929) 10

Re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955) 12

Talton v. Mayes, 163 U.S. 376, 16 S. Ct. 986, 41 L. Ed. 196 (1896) 22

Toledo v. Pueblo de Jemez, 119 F. Supp. 429, D.C. N.M. (1954) 8, 15, 16, 22

PAGE

Trujillo vs. Garley, D.C.N.M., Civil No. 1353, Unreported 28

Truscott vs. Hurlbut Land & Cattle Co., 73 Fed. 60, C.C.A. 9 (1896) 21

United States vs. Burnison, 339 U.S. 87, 70 S. Ct. 503, 94 L. Ed. 675 (1950) 6

United States v. Sandoval, 231 U.S. 28, 34 S. Ct. 1, 58 L. Ed. 107 (1913) 8, 15, 16, 24

United States v. Varela, 1 N.M. 593, 598 (1874) 22

Utah Northern Railway vs. Fisher, 116 U.S. 28, 6 S. Ct. 264, 29 L. Ed. 542 (1885) 20

Wagoner vs. Evans, 170 U.S. 588, 18 S. Ct. 730, 42 L. Ed. 1154 (1898) 21

Williams v. Lee, 358 U.S. 217, 79 S. Ct. 269, 3 L. Ed. 2d 251 (1959) 15, 16, 17, 19, 20, 32

Wilson vs. Cook, 327 U.S. 474, 66 S. Ct. 663, 90 L. Ed. 793 (1946) 4

Worcester vs. Georgia (1832), 6 Pet. 515, 8 L. Ed. 483 ..... 7, 9, 12, 13, 15, 16, 20, 22, 27, 32

STATUTES:

Acts of Congress

Indian Reorganization Act (Wheeler-Howard Act), Act of June 18, 1934, Ch. 576, Sec. 16, 18 and 19; 48 Stat. 987-988; 25 U.S.C., Sec. 476, 478 and 479 ..... 1, 8, 19

Act of August 15, 1953, Ch. 505, Sec. 6, 67 Stat. 590 ..... 28, 33

PAGE

Act of February 15, 1929, Ch. 216, 45 Stat. 1185, as amended by Act of August 9, 1946, Ch. 930, 60 Stat. 962; 25 U.S.C., Sec. 231 2

Act of December 22, 1858, 11 Stat. 374 ..... 2, 25

Buck Act, Act of July 30, 1947, Ch. 389, Sec. 1, 61 Stat. 641, as amended, 4 U.S.C. Secs. 105-110 23

New Mexico Enabling Act, Act of June 20, 1910, 36 Stat. 557, Ch. 310, Sec. 2 ..... 11, 25

Other

Revised Supreme Court Rule 19(1)(a) 13

Revised Supreme Court Rule 22(1)(c) 6

New Mexico Constitution, Article XXI, Sections 2 and 8 11

Sections 14-6-11 New Mexico Statutes (1953 Annotated); (Laws 1903, Ch. 105, Sec. 1, as amended by Laws 1935, Ch. 53, Sec. 3, and Laws 1939, Ch. 204, Sec. 2) 2, 5, 18

TEXTBOOKS AND MISCELLANEOUS:

Annotation 64 A.L.R. 1341 10

Federal Indian Law, Publication of United States Department of the Interior, 1958 Edition 8, 19, 22, 24, 28

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OPINIONS BELOW

The reference to the official report of the opinion in the Pacific Reporter should be 361 P. 2d. 950.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

The following should be added to petitioner's list:

Item A. Indian Reorganization Act (Wheeler-Howard Act), Act of June 18, 1934, Ch. 576, Sec. 16, 18 and 19; 48 Stat. 987-988; 25 U.S.C., Indians, Sec. 476, 478 and 479.

Item B. Act of February 15, 1929, Ch. 216, 45 Stat. 1185, as amended by Act of August 9, 1946, Ch. 930, 60 Stat. 962; 25 U.S.C., Sec. 231.

Item C. Section 14-6-11 New Mexico Statutes (1953 Annotated); (Laws 1903, Ch. 105, Sec. 1, as amended by Laws 1935, Ch. 53, Sec. 3, and Laws 1939, Ch. 204, Sec. 2.)

Item D. Act of December 22, 1858, 11 Stat. 374.

The pertinent text of these is set forth in Appendix A.

STATEMENT OF THE CASE

For its statement of the facts, petitioner has adopted portions of the Findings of Fact made by the District Court of Santa Fe County, the trial court (R. 52-55). These findings by the District Court, together with its Conclusions of Law (R. 55-57), constitute its decision in the case under New Mexico procedure. *Lusk vs. First National Bank of Carrizozo*, 46 N.M. 445, 130 P. 2d. 1032 (1942).

However, the "Findings of Fact" that petitioner had annexed the Pueblo lands in question (R. 54, findings Nos. 6 and 7), and that respondent's place of business was located within the Village limits (R. 52, finding No. 1), were, in reality, conclusions of law. Similarly, the "finding" that the Pueblo lands in question had not, in the words of the court, " * * * been made the subject of or brought into Santa Clara Pueblo, City or corporate limits for any purpose of municipal government or taxation as distinguished from the incident of ownership generally" (R. 53-54, finding No. 5), was a conclusion of law.

It was on the basis of its legal conclusion that the

Pueblo lands had been validly annexed that the District Court rendered judgment against respondent (R. 57-8), and it was on the ground that this legal conclusion was erroneous that respondent appealed to the New Mexico Supreme Court (R. 155, Points Relied on for Reversal) and that the Supreme Court rendered its decision reversing the District Court, saying:

> "It follows that the purported annexation of the lands in question was void and that said property is not within the corporate limits of the Village of Espanola, and that the municipal sales tax cannot be collected from appellant." (R. 363).

MATTERS AND GROUNDS WHY THE CAUSE SHOULD NOT BE REVIEWED BY THIS COURT

POINT I

CERTIORARI SHOULD BE DENIED BECAUSE NO REVIEWABLE QUESTION IS PRESENTED BY THE PETITION.

The petition presents two questions for review (petition 2-3). The first of these reads as follows:

> "1. Whether a municipal corporation of the state of New Mexico may, consistent with Federal law and the Santa Clara Pueblo Indians' right of self-government, impose a municipal sales tax upon a non-Indian supermarket corporation, conducting its business upon lands leased from the Santa Clara Pueblo Indians, but which lands have been annexed to and brought within the corporate limits of such municipal corporation."

As may be seen, petitioner first recites that the Pueblo of Santa Clara lands in question, on which respondent's place of business is located, have been annexed to and brought within the Village limits, and then seeks to present for review the question whether petitioner may, under these circumstances, tax respondent. This question was not decided by the New Mexico Supreme Court.

The only issue raised by Respondent in its appeal to the New Mexico Supreme Court was whether there had been a valid annexation of the Indian lands (see Respondent's Points Relied on for Reversal, R. 155), and since the Court held that the purported annexation of the lands was void, it did not reach or decide the academic question of whether petitioner might, given a valid annexation, tax respondent. Cf. *Dean Milk Co. vs. City of Madison, Wis.*, 340 U.S. 349, 71 S. Ct. 295, 95 L. Ed. 329 (1951). Therefore, in reciting that the Indian lands have been annexed to the Village and in thus assuming the validity of the annexation, petitioner has ignored the very question decided against it by the New Mexico Court.

This Court has held that it will not review questions which were not decided by the state court, *Wilson vs. Cook*, 327 U.S. 474, 66 S. Ct. 663, 90 L. Ed. 793 (1946), and since the present question sought to be presented for review falls into that category, respondent submits that it is not a reviewable question.

Petitioner's second question for review reads as follows:

> "2. Whether, insofar as the imposition of a municipal sales tax upon a non-Indian supermarket corporation, conducting its business upon lands leased

> from the Santa Clara Pueblo Indians, is concerned, the annexation of such Santa Clara Pueblo Indian lands by such municipal corporation is prohibited by Federal law or violates the Indians' rights of self government."

In seeking to present this question for review, petitioner makes two erroneous assumptions, first that under the state annexation statute relied on by it, it is possible to have an annexation for the limited purpose of taxing a business conducted within the annexed territory and, second, that the only test of the validity of such an annexation is whether it is "prohibited by Federal law or violates the Indians' rights of self government."

The annexation statute pursuant to which petitioner attempted to annex the Pueblo lands in question is Section 14-6-11 New Mexico Statutes (1953 Annotated) (R. 353). This statute is set out in full in Appendix A. In its opinion, the New Mexico Supreme Court considered this statute and said:

> "14-6-11 N.M.S.A. 1953 Comp., provides that territory annexed to a municipality *becomes a part of it for all purposes* and is subject to its legislative action * * *" (R. 362). (All emphases used in this brief are respondent's.)

As appears from the foregoing, the New Mexico Court has held, on the basis of the plain language of Section 14-6-11, that there can be no limited annexation of Indian or any other lands, and that territory annexed under the statute becomes a part of the annexing municipality for *all* purposes, no less. Furthermore, this holding, being a construction of a state statute by a State

Supreme Court, is binding on this Court. *United States vs. Burnison*, 339 U.S. 87, 70 S. Ct. 503, 94 L. Ed. 675 (1950). Therefore, the question whether such a limited annexation would be valid as a matter of Federal law is beside the point and not open to review.

Actually, the question decided by the New Mexico Court is that the attempted annexation of the Pueblo lands for all purposes was invalid. However, petitioner has failed to present that question for review in its petition for certiorari and this Court may therefore not consider it under its Revised Rule 22(1)(c), which provides that only those questions set forth in the petition or fairly comprised therein may be considered.

Even if this Court determines that a reviewable question is presented, respondent nevertheless submits that this is not a proper case for review, for reasons now to be argued.

POINT II

CERTIORARI SHOULD BE DENIED BECAUSE THE DECISION OF THE NEW MEXICO SUPREME COURT RESTS ON AN ADEQUATE AND INDEPENDENT STATE GROUND.

It is fundamental that this Court will not review a decision of a state court that rests on an adequate and independent state ground. *Herb vs. Pitcairn*, 324 U.S. 117, 65 S. Ct. 459, 89 L. Ed. 789 (1945).

One of the grounds on which the present decision of the New Mexico Supreme Court rests is that to per-

mit the Village of Espanola to annex that portion of the Pueblo of Santa Clara lands in question:

> "* * * would affect the authority of the tribal council over reservation affairs and, hence, would infringe on the right of the Indians to govern themselves." (R 363).

In arriving at this conclusion, the New Mexico Court made the following material findings and observations with respect to the sovereign character of the Pueblo of Santa Clara and the right of the Indians thereof to govern themselves:

1. "The Santa Clara Pueblo owns and occupies a tract of land as communal or tribal lands patented to the Pueblo by the United States pursuant to an Act of Congress confirming a claim of a grant to the Indian tribe by the King of Spain, a former sovereignty." (R. 353).

2. "The early landmark case of *Worcester vs. Georgia* (1832), 6 Pet. 515, 31 U. S. 515, 8 L. Ed. 453, in an exhaustive opinion by Chief Justice Marshall, developed that the Indian tribes are distinct political entities, with the right of self-government, having exclusive authority within their territorial boundaries and are not subject to the laws of the State in which they are located nor to federal laws except where federal laws or the jurisdiction of courts is expressly conferred by federal legislation." (R. 354-5).

3. The Court cited Cohen's *Handbook of Federal Indian Law*, (1940 Edition) for the proposition that Indian tribes are "* * * qualified to exercise powers of self-government, not by virtue of any delegation

of powers from the Federal Government, but rather by reason of their original tribal sovereignty." (R. 355).

4. "The Pueblo Indians have the same right of self-government as other Indian tribes. The Indian Reorganization Act, 48 Stat. 984, as amended, 25 U.S.C.A., Sec. 461 et seq. See *United States v. Sandoval*, 231 U.S. 28, 58 L. Ed. 107; *United States v. Candelaria*, 271 U.S. 432, 70 L. Ed. 1023; *Toledo v. Pueblo de Jemez*, 119 F. Supp. 429; The Pueblo Lands Act, 43 Stat. 636." (R. 356).

5. "The Santa Clara Pueblo adopted and acts under a written constitution. *Federal Indian Law*, p. 915. It is conceded that the Santa Clara Pueblo is self-governing." (R. 357).

The New Mexico Court then went on to say:

> "There has been no question since *United States v. Sandoval*, supra, that the Pueblo Indians do not derive their governmental powers from the State of New Mexico. *Toledo v. Pueblo de Jemez*, supra. *It must, likewise, be conceded that two self-governing bodies cannot have dual and co-existent jurisdiction and control within the same territory at the same time. In re Sandia Conservancy District*, 57 N.M. 413, 259 P 2d. 577. *They are not here exercising functions for different purposes within the same boundary.*" (R. 361).

and to conclude, as stated above, that to allow the annexation would affect the authority of the tribal council over Pueblo affairs and infringe on the right of the Indians to govern themselves.

Respondent submits that this holding by the New Mexico Court is based on the underlying principle of New Mexico law, italicized above, that two self-governing bodies, functioning for the same purposes, cannot have dual and co-existent jurisdiction and control within the same territory at the same time, the court citing its own decision in *In Re Sandia Conservancy District*, 57 N.M. 413, 259 P. 2d. 577 (1953) in support of this principle.[1]

As may be seen from those portions of its opinion quoted above, the New Mexico Court examined into such decisions of this Court as *Worcester vs. Georgia*, and such acts of Congress as the Indian Reorganization Act, both cited and discussed infra, as well as other authorities, in order to determine the nature and extent of the Pueblo's rights of self-government. The court noted that the Pueblo Indians, like other Indian tribes, are qualified to exercise powers of self-government, not by delegation from either the federal or state governments, but by reason of their original sovereignty; that the Pueblo of Santa Clara operates under a written constitution, and that it was conceded that the Pueblo is self-governing. However, in holding that the annexation would infringe on the Pueblo's rights of self-government, the New Mexico Court did not attempt to add to or substract from such rights but, taking such rights as it found them and in recognition thereof, held that the Village could not annex the Pueblo lands, for to allow it to do so would create a situation where two self-governing bodies, the Pueblo and the Village, functioning for the same purposes, the local government of the lands of their domains, would be exercising

[1] In accord is **City of El Paso vs. States**, infra, where the Texas Court of Civil Appeals said that it is elementary that two municipal corporations cannot exercise the same general governmental authority over the same area.

"dual and co-existent jurisdiction and control within the same territory at the same time", contrary to the rule of *Sandia Conservancy District*.

In *Herb v. Pitcairn*, supra, this Court held that its only power over decisions of state courts is to correct them to the extent that they incorrectly adjudge federal rights. It should be emphasized that the Village of Espanola has no federally created or supported right to annex the Pueblo lands in question. Its power to annex such Indian lands or any other lands and, indeed, its very existence rests on the state law of New Mexico. *Laramie County vs. Albany County*, 92 U.S. 307 at 308, 23 L. Ed. 552 (1875). *Munro vs. City of Albuquerque*, 48 N.M. 306, 150 P. 2d. 733 (1943); Annotation 64 A.L.R. 1341. Therefore, in holding that the Village could not annex the Pueblo lands, the New Mexico Court did not deny any federal right, but only the claimed right of a state municipality to extend its boundaries under a state annexation statute. This Court has held that it is bound by the decisions of the highest courts of the states as to the powers of their municipalities under state law. *Railroad Commission of California vs. Los Angeles Railway Corporation*, 280 U.S. 145, 50 S. Ct. 71, 74 L. Ed. 234 (1929); *Georgia Railway & Power Co. vs. Town of Decatur*, 262 U.S. 432, 43 S. Ct. 613, 67 L. Ed. 1065 (1923).

As shown, the holding by the New Mexico Court that the annexation would infringe on the Pueblo's rights of self-government is based on the underlying and controlling principle of state law that two self-governing bodies, exercising the same functions for the same purposes, cannot have simultaneous jurisdiction and control over the same area. This is the state of affairs which the Court has said

would arise from the annexation of the Pueblo Lands and which, in the exercise of its exclusive perogative to determine the powers of a state municipality under state law, it has said cannot be permitted to exist under the rule of *Sandia Conservancy District*. Even were this Court inclined to disagree and to hold that the annexation would not unduly infringe on the Pueblo's rights of self-government, still the case would not be reviewable because the decision of the state court resting on a substantial independent state basis, this Court has held that it will not inquire whether the state court's ruling is right or wrong, and will not substitute its views of what the proper ruling should be for those of the state court. *Demorest vs. City Farmers Trust Co.*, 321 U.S. 36, 64 S. Ct. 384, 88 L. Ed. 526 (1944).

The decision of the New Mexico Supreme Court rests on still another grounds, namely, that the State of New Mexico has no such jurisdiction over the Pueblo of Santa Clara lands as would enable it to confer on the Village of Espanola the power and authority to annex that portion of the Pueblo lands in question. This conclusion by the New Mexico court was based primarily upon the disclaimer to Indian lands and upon the reservation of absolute jurisdiction and control over such lands to Congress contained in the New Mexico Enabling Act, Act of June 20, 1910, 36 Stat. 557, Ch. 310, Sec. 2, paragraph Second, and adopted in the New Mexico Constitution, Article XXI, Sec. 2. Unquestionably these provisions include the Pueblo Indians and their lands. New Mexico Enabling Act, Sec. 2, paragraph Eighth, and New Mexico Constitution, Article XXI, Sec. 8 (All provisions of the Enabling Act and State Constitution referred to are set out in full at Petition 40-43).

Certainly to the extent that this holding was based on a construction of the New Mexico Constitution, a state and not a federal question was decided, *Re Murchison*, 349 U. S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955). However, even if this Court determines that a federal question was decided and that the New Mexico Court's holding on such federal question was incorrect, still the case is not reviewable because, as has been shown, the New Mexico Court's decision rests on an adequate and independent state ground and this Court has said that, under these circumstances, it will not review the decision of a state court even though the state court has "* * * summoned to its support an erroneous view of Federal law." *Radio Station WOW, Inc. vs. Johnson*, 326 U.S. 120, 65 S. Ct. 1475, 89 L. Ed. 2092 (1945).

POINT III

CERTIORARI SHOULD BE DENIED BECAUSE THE QUESTION OF WHETHER A STATE OR ITS POLITICAL SUBDIVISIONS MAY ANNEX INDIAN LANDS HAS HERETOFORE BEEN DETERMINED BY THIS COURT IN *WORCESTER VS. GEORGIA*, INFRA, AND THE DECISION OF THE NEW MEXICO SUPREME COURT IS IN ACCORD WITH *WORCESTER* AND OTHER APPLICABLE DECISIONS OF THIS COURT, AS WELL AS APPLICABLE ACTS OF CONGRESS.

Respondent has argued that certiorari should be denied because the decision of the New Mexico Supreme Court rests on an adequate and independent state ground. However, even if this Court deems that the questions de-

cided by the New Mexico Court are exclusively federal, respondent nevertheless submits that the case is not an appropriate one for review. In Rule 19(1) of the Revised Rules of this Court, it is stated that certiorari will be granted only where there are special and important reasons therefor giving, as illustrative of the character of the reasons which will be considered:

> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

The question of whether a state or its political subdivisions may annex Indian lands was answered in the negative by this Court in *Worcester v. Georgia*, 6 Pt. 515, 8 L. Ed 483 (1832). In *Worcester* this Court had before it an Act of the Georgia Legislature (set out in full at 6 Pet. 524-528) sections 1 to 5 of which purported to annex specified portions of the Cherokee reservation to various Georgia counties. For example, Section 3 of the Act provided:

> "Sec. 3. That all that part of the said territory lying north of the last-mentioned line, and south of a line commencing at the mouth of Baldridge's creek; thence up said creek to its source; from thence to where the federal road crosses the Hightower; thence with said road to the Tennessee line, *be and the same is hereby added to, and shall become part of, the county of Gwinnett.*"

Worcester had been convicted of residing in the Cherokee nation without a license from the Georgia Governor. Specifically, the indictment charged that Worcester had resided in that part of the Cherokee nation attached by

the above-quoted Section 3 to the County of Gwinnett. In Worcester's plea to the indictment he contended that the Georgia law which purported to annex the Cherokee reservation to the several Georgia counties was unconstitutional and void. On Writ of Error, this Court, in an opinion by Chief Justice Marshall, sustained Worcester's plea and held his conviction void, saying:

> "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States. * * *
>
> If the view which has been taken be correct, and we think it is, the acts of Georgia are repugnant to the constitution, laws and treaties of the United States. They interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, are committed exclusively to the government of the Union. They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself."

The Indians of the Pueblo of Santa Clara occupy the same sovereign self-governing status as the Cherokees or any other Indian tribe. *United States vs. Sandoval*, 231 U.S. 28, 34 S. Ct. 1, 58 L. Ed. 107 (1913); *Toledo vs. Pueblo de Jemez*, 119 F. Supp. 429, D.C.N.M. (1954). Therefore, the attempted annexation of the Santa Clara Pueblo lands in question by the Village of Espanola is no different from the attempted annexation of the Cherokee lands by the State of Georgia. *Worcester* held the attempted annexation of the Cherokee lands void and the New Mexico Supreme Court, in accord with and following *Worcester*, as well as more recent decisions of this Court, held the attempted annexation of the Pueblo lands void.

In order to show that the decision of the New Mexico Court is in accord with other applicable decisions of this Court, as well as applicable Acts of Congress, it will be necessary for respondent to make some response to the points relied on by petitioner.

Response to Petitioner's Point I

The principles of *Worcester* were re-affirmed by the decision of this Court in the recent case of *Williams v. Lee*, 358 U.S. 217, 79 S. Ct. 269, 3 L. Ed. 2d 251 (1959). Petitioner argues (petition 9-10) that *Williams* is distinguishable for the reasons that:

1. In *Williams* the defendant was an Indian, while here neither party is an Indian.

   The answer is that the lands involved are Indian lands.

2. The tax is not sought to be imposed on an Indian or Indian transaction.

The answer is that unless the Village validly annexed the Pueblo lands, it has no taxing power over or within such lands whatsoever.

3. The *Williams* suit was within the jurisdiction of the Navajo court, while here the Pueblo would have no jurisdiction over petitioner or respondent in their dealings with each other.

   The answer is that while the Pueblo may have no jurisdiction over petitioner and respondent in their dealings inter se, it does have jurisdiction over the lands of its domain which the Village attempted to annex.

4. The Pueblo of Santa Clara is not a treaty nation as was the Navajo tribe in Williams.

   The answer is that the Indians of the Pueblo of Santa Clara occupy the same status as treaty Indians, such as the Navajos in *Williams* and the Cherokees in *Worcester*, *United States vs. Sandoval*, supra; *Toledo vs. Pueblo de Jemez*, supra.

5. Congress had passed no legislation authorizing the Williams suit to be brought in the state courts of Arizona.

   The answer is that Congress has likewise passed no legislation authorizing the Village to annex Pueblo lands.

In *Williams* this Court stated the test of state power over Indian affairs as follows:

> "Essentially, absent governing acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them."

So in the present case (putting aside for the moment the applicable acts of Congress which, respondent submits, themselves preclude the annexation of Pueblo lands) the question is whether the attempted annexation of their lands would infringe on the right of the Indians of the Pueblo of Santa Clara to make their own laws and be ruled by them. In *Williams* this Court held that a non-Indian who sold goods to an Indian on credit on the Navajo reservation in Arizona could not bring suit to collect for the same in the state courts of Arizona, saying:

> "There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs, and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. * * * *The cases in this Court have consistently guarded the authority of Indian governments over their reservations.* * * *"*

If as held in *Williams*, the adjudication of rights under a contract made on the Navajo reservation, between an Indian and a non-Indian, rests in the jurisdiction of the Navajo courts to the exclusion of the Arizona courts, then surely it must be true in the present case, as held by the New Mexico Court, that the right to exercise governmental power and authority over the Pueblo domain itself, as between the Pueblo government and a non-Indian Village government, rests in the Pueblo government to the exclusion of the Village government.

Petitioner argues that the annexation of the Pueblo lands and the resulting imposition of a tax on respondent

would not, per se, infringe on the rights of the Indians. However, as shown earlier, Section 14-6-11 New Mexico Statutes (1953 Annotated), under which the Village attempted to annex the Pueblo lands, does not provide for a limited annexation for tax purposes only. On the contrary it provides that the annexed area becomes a part of the annexing municipality "for all purposes". Therefore, if the attempted annexation should be upheld, this would necessarily mean that the Village would have the right not merely to tax respondent, but to exercise general governmental power and authority over and within the Pueblo lands, legislative, executive and judicial. The statutory powers conferred on New Mexico municipalities are contained in Volume 3 New Mexico Statutes (1953 Annotated), Chapter 14, Articles 1 to 48, and include broad powers with respect to zoning, planning, urban renewal and the like. Although respondent will not undertake to catalog these powers, they are listed in some detail at pages 21 to 24 of the Brief-in-Chief filed by the Pueblo as Amicus Curiae in the New Mexico Supreme Court (R. 247-250). After reviewing these powers, counsel for the Indians said:

> "If New Mexico municipalities may lawfully annex restricted Indian land and thereby make the Indian land a part of the municipality 'for all purposes', the various zoning, improvement and Renewal Laws should apply. In those unhappy circumstances, what would happen to the unique Pueblos, say the Pueblo of Taos, for example? There would be a field day for planners."

Respondent submits that to permit this battery of municipal powers to come into play on the Pueblo lands would be in irreconcilable conflict with and would, per se,

infringe upon the authority of the Pueblo government over its own lands, which authority, this Court said in *Williams* it has consistently guarded against state infringement.

In *Williams* this Court referred to the Wheeler-Howard Act, also known as the Indian Reorganization Act, Secs. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477, and said that Congress had thereby "* * * encouraged tribal governments and courts to become stronger and more highly organized." This Act applies to the Pueblo of Santa Clara,[2] and pursuant thereto the Pueblo of Santa Clara has adopted and now operates under a written constitution. *Federal Indian Law*, p. 915. [3, 4] Obviously a Congressional policy of encouraging the government of the Pueblo of Santa Clara to become stronger would not be consistent with subordinating that government to a Village government of no greater dignity, yet to uphold the attempted

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[2]The Pueblos are expressly included within the definition of an Indian tribe contained in Section 19 of the Act, 48 Stat. 988, 25 U.S.C. Sec. 479. The Pueblo of Santa Clara voted in favor of the application of the Act in a referendum election held pursuant to Section 18 of the Act, 48 Stat. 988, 25 U.S.C. Sec. 478. **Federal Indian Law,** p. 911. These provisions of the Act are set out in Appendix A.

[3]An authenticated copy of this constitution, and of the Pueblo bylaws, were offered in evidence, but the offer was refused on the grounds that the exhibit was not material, the Village having admitted that the Pueblo is self-governing (Plaintiff's Ex. No. 15, R. 120). The exclusion of this exhibit was respondent's Point II relied on for reversal in the New Mexico Supreme Court (R. 154), but the court did not rule on the point even though it noted the existence of the constitution in its opinion (R. 357). Respondent feels that the exhibit was material and should have been admitted. If this Court agrees, the original is on file with the Clerk and available for examination.

[4]**Federal Indian Law** is a publication of the United States Department of the Interior. All citations herein are to the 1958 edition, which is a revision of the 1940 edition cited by the New Mexico Court in its opinion.

annexation and thus to give the Village the right to exercise general governmental authority over the Pueblo domain would have just that result.

Petitioner finds nothing "sacred" in the Indian lands which would prevent the Village from annexing them. Suffice it to say that the Pueblo does not agree, as evidenced by the briefs filed on behalf of the Indians as Amicus Curiae in the New Mexico Supreme Court (Brief-in-Chief, R. 220-276; Reply Brief, R. 310-324, and Brief in Opposition to Motion for Re-Hearing, R. 379-390).

It is true that in *Williams* this Court said that it has modified the principles of *Worcester* in cases where the rights of the Indians would not be jeopardized, giving the examples that suits by Indians against outsiders in state courts have been sanctioned, and that state courts have been allowed to try non-Indians committing crimes against each other on Indian lands. However, it is also true that in *Williams* this Court said that the basic policy of *Worcester* has remained unchanged, and respondent submits that to allow the authority of the Pueblo government to be undermined by a minor political subdivision of the State of New Mexico would not be a mere modification of the rules of *Worcester*, but a complete abandonment thereof.

Utah Northern Railway vs. Fisher, 116 U.S. 28, 6 S. Ct. 264, 29 L. Ed. 542 (1885), is distinguishable because the territory on which the railroad property was located had been ceded by the Indians to the United States and by the United States to the railroad, with the result that such territory had been completely withdrawn from the reservation (see p. 32 of the United States Reports). *Maricopa & Phoenix Railroad vs. Arizona*, 156 U.S. 347, 15 S. Ct. 391, 39 L. Ed. 447 (1895), is distinguishable on

the same basis (see p. 351 of the U. S. Reports). The Pueblo lands involved belong to the Pueblo as a part of its grant lands (R. 53). *Truscott vs. Hurlbut Land & Cattle Co.*, 73 Fed. 60, C.C.A. 9 (1896), and *Wagoner vs. Evans*, 170 U.S. 588, 18 S. Ct. 730, 42 L. Ed. 1154 (1898), are distinguishable because they involved state or territorial taxes on property found to be within the state or territorial boundaries. The tax here involved, being a municipal tax, cannot be imposed unless the Village validly annexed and thus brought the Indian lands within its municipal boundaries.

Petitioner relies on *Howard vs. Commissioners*, 344 U.S. 624, 73 S. Ct. 464, 97 L. Ed. 617 (1953). Respondent submits that *Howard* is distinguishable for the following reasons:

1. The difference between a federally owned naval ordnance plant and an Indian nation is apparent.

2. The Indians of the Pueblo of Santa Clara are sovereign and, within the Pueblo domain, possess and exercise the power of local self-government. The ordnance plant had no residents occupying such sovereign self-governing status.

3. In *Howard* this Court held that the annexation did not interfere with the exercise of jurisdiction by the United States within the ordnance plant area. The United States, operating at the federal level, and the City of Louisville, operating at the municipal level of government, were each exercising separate and distinct functions and it was held that the sovereign rights in the resulting dual relationship were not antagonistic, accomodation and co-operation being their aim. *Howard* is merely an example

of the dual relationship which is the hallmark of our federal-state system of government. In contrast, the Pueblo of Santa Clara has never been and does not now constitute a part of our federal system of government. It is a distinct political entity, *Worcester v. Georgia*, supra, whose governmental rights are not derived from either the United States or the State of New Mexico, but from its original tribal sovereignty. *Toledo v. Pueblo de Jemez*, supra; *Talton v. Mayes*, 163 U.S. 376, 16 S. Ct. 986, 41 L. Ed. 196 (1896). Moreover, the Pueblo of Santa Clara operates at the same local level of government as the Village of Espanola. The very word "Pueblo" is defined in the Spanish language as an inhabited town or village. *United States v. Varela*, 1 N.M. 593 at 598 (1874). The Pueblo governments have been classified as municipal in character *Garcia v. U. S.*, 43 Fed. 873, C.C.A. 10 (1930); *Federal Indian Law*, p. 396. Therefore, to allow the Village to annex and thus to exercise general governmental powers within the Pueblo area, would necessarily interfere with and infringe on the Pueblo's right to exercise the same powers in the same area, and the sovereign rights in such a relationship would necessarily be antagonistic for, as stated in *City of El Paso vs. State*, 209 S.W. 2d 989 (Tex. Civ. App. 1947):

> "Two municipal corporations cannot exercise the same general governmental authority over the same area. This proposition is elementary and is sustained by all precedents without disagreement."

There was no element of accomodation or co-operation in the Village's attempt to annex the Pueblo lands. The Pueblo did not sign the annexation petition and the Village acted ex parte (R. 362).

4. The annexation in *Howard* was not challenged by the United States. The present annexation has been challenged by the Indians as well as respondent (R. 220-276, 310-324, 379-390).

Response to Petitioner's Point II

Petitioner argues that the Buck Act, Act of July 30, 1947, Ch. 389, Sec. 1, 61 Stat. 641 as amended, 4 U.S.C. Secs. 105-110, gives it the right to tax respondent, but this Act does not aid petitioner for two good reasons:

1. Under Section 105(a) of the Act, only a state or state taxing authority "* * *" having jurisdiction to levy such a tax "* * *" is empowered to levy and collect a sales tax in a federal area. Since the New Mexico Supreme Court held that the Pueblo area in question was not validly annexed, the Village is not a taxing authority having jurisdiction to levy a tax within such area.

Petitioner says that this holding:

> "* * *" is in complete disregard of Section 108 of the Buck Act which states that it shall not be deemed to deprive the United States of exclusive Federal jurisdiction where it would otherwise have such exclusive jurisdiction." (Petition 15)

Petitioner misapprehends the meaning of Section 108 which is, merely, that the provisions of the Act granting states and state taxing authorities the power to levy taxes in federal areas, *Assuming they otherwise have jurisdiction to do so*, shall not be deemed to diminish the jurisdiction which the United States has over the particular area in question.

2. Moreover, the Pueblo area in question is not a "Federal area". The term is defined in Section 110(e) of the Act as follows:

> "The term 'Federal area' means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; * * *"

Since the Pueblo of Santa Clara holds the title to its lands in communal fee simple ownership, *United States v. Sandoval*, supra, its lands are obviously not "* * * held or acquired by or for the use of the United States or any department, establishment, or agency of the United States * * *" and, therefore, are not a "Federal area" within the meaning of the Buck Act definition.

Petitioner points to Section 109 of the Act as evidence that Congress intended to include Indian lands within its definition of a "Federal area". Perhaps those Indian reservations to which the United States holds the legal title, with the Indians having only the right of use and occupancy, could be considered to be "Federal areas" under the Act, but the Pueblo of Santa Clara holds the fee simple title to the lands here involved. Moreover, it is a recognized historical fact that the Pueblo Indians are an entirely different class of people than the nomadic and warlike Indians, such as the Navajos or Apaches in New Mexico. *Federal Indian Law*, p. 889. The latter had to be subdued by military force and, pursuant to treaties between them and the United States, now occupy "reservations" consisting of large areas of land set aside for them out of the public domain by the federal government. In contrast, the Pueblo Indians have always been a village people, following agricultural pursuits, and received

grants to the villages already occupied by them from the Spanish government. The grant to the Pueblo of Santa Clara was confirmed by Act of Congress. Act of December 22, 1858, 11 Stat. 374, Ch. V. Consequently, regardless of what the situation may be in respect to the taxability of these Indian "reservations", the Pueblo of Santa Clara, owning its lands in fee, duly confirmed by Act of Congress, is not a federal area subject to taxation by the Village under the Buck Act or otherwise.

Petitioner suggests that it is an "inequitable situation" that businesses within the Village limits are required to pay Village taxes while respondent, being without the Village limits, is relieved from the payment of such taxes and is given a "competitive advantage over neighboring supermarkets." There is nothing in the record to support the statement that respondent has a competitive advantage over any other business, indeed, this would be entirely immaterial, because respondent has no more advantage than any other business which happens to be located outside the Village limits.

Response to Petitioner's Point III

Not only did the New Mexico Supreme Court hold that the attempted annexation would infringe on the right of the Indians to govern themselves, but it further held, as an additional ground for striking down the annexation, that the disclaimer to and reservation of absolute jurisdiction and control over Indian lands to Congress contained in the New Mexico Enabling Act, Act of June 20, 1910, 36 Stat. 557, Ch. 310, Sec. 2, and adopted in the New Mexico Constitution, Article XXI, Section 2, itself precluded the annexation.

The substance of petitioner's argument under this

point is that the New Mexico Supreme Court has held, and now takes the view that the state has "* * * absolutely no jurisdiction for any purpose * * *" over Indian lands with the result that "* * * crimes committed by non-Indians against non-Indians on Indian reservations will go unpunished by virtue of a lack of jurisdiction in any court to try the offender" (Petition 18 and 20).

Respondent does not feel that this is a fair statement of the position of the New Mexico Court which, in its opinion, said:

> "To our minds, the terms upon which New Mexico was admitted as one of the states of the Union and Article XXI, Sec. 2 of our Constitution, left no room for a claim by the state to governmental power over the Indians or Indian lands, *except where such jurisdiction has been specifically granted by Act of Congress, or sanctioned by the decisions of the Supreme Court of the United States.*" (R. 356).

The italicized language shows that the Court recognized that Congress may act affirmatively to grant New Mexico such jurisdiction as it may see fit and later in its opinion (R. 358) the Court noted an instance where Congress has in fact done so, by making state health and compulsory school attendance laws applicable to Indian lands, citing Title 25 U.S.C.A., Sec. 231.[5]

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[5] Act of February 15, 1929, Ch. 216, 45 Stat. 1185, as amended by Act of August 9, 1946, Ch. 930, 60 Stat. 962, 25 U.S.C., Sec. 231 set forth in Appendix A.

It is interesting to note that this Act provides that state compulsory school attendance laws shall not apply to the Indians of any tribe having a duly constituted governing body, until such body had adopted a resolution consenting to the application of such laws. Yet here, the Village claims the right to exercise general governmental powers on the Indian lands without the consent of Congress and without the consent of the Indians.

The New Mexico Court also recognized that this Court has announced certain judicial exceptions to the rule of Worcester, saying:

> "Suits by Indians against non-Indians in state court have been sanctioned by the United States Supreme Court, Felix v. Patrick, 145 U.S. 317, 12 S.Ct. 862, 36 L.Ed. 719. And non-Indians who committed crimes against each other on a reservation may be tried in the state courts. New York ex rel Ray v. Martin, 326 U.S. 496, 66 S.Ct. 307, 90 L.Ed. 261. These are modifications of the principles of Worcester v. Georgia, supra, made over the years by the Supreme Court of the United States as not jeopardizing the rights of Indians nor involving essential tribal relations or the right of self-government. Williams v. Lee, supra." (R. 358-9).

It is therefore apparent that the New Mexico Supreme Court has not held and does not take the view that the state has no jurisdiction over Indian lands for any purpose whatsoever. Moreover, by its reference to *New York ex rel. Ray vs. Martin*, it is apparent that the New Mexico court is fully aware that crimes committed by non-Indians against non-Indians on Indian land may be tried in the state courts. Respondent submits that the true holding of the New Mexico court in this respect is that under the plain provisions of the Enabling Act and New Mexico Constitution, and under the rule of *Worcester*, even as modified in recent years, the state lacked the requisite jurisdiction over the Pueblo lands involved to enable it to confer on the Village the power or authority to annex the same.

Indian voting rights have nothing to do with the issues in this case.[6]

Response to Petitioner's Point IV

Petitioner argues that prior to the Act of August 15, 1953, Ch. 505, Sec. 6, 67 Stat. 590, it had the right to annex the Pueblo lands involved, and that the Act did not divest it of that right. For convenience, the Act is here set out in full:

> "Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any *legal impediment* to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended

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[6] The New Mexico Constitution, Article VII, Sec. 1, prescribing qualifications for voters, excludes "Indians not taxed". On August 11, 1948, a three-judge Federal District Court sitting in the unreported case of **Trujillo vs. Garley**, D.C.N.M., Civil No. 1353, held that the New Mexico Indians were entitled to vote because Article VII, Sec. 1 constituted a discrimination on the grounds of race contrary to the Fourteenth and Fifteenth Amendments to the United States Constitution. A portion of the transcript of the court's oral opinion is quoted in **Federal Indian Law**, p. 531, as follows:

> "* * * Any other citizen, regardless of race, in the State of New Mexico who has not paid one cent of tax of any kind or character, if he possesses the other qualifications, may vote. An Indian, and only an Indian, in order to meet the qualifications of a voter, must have paid a tax * * *

The Indians have voted ever since.

their State constitution or statutes, as the case may be."

In its opinion the New Mexico Supreme Court noted that New Mexico has not seen fit to amend her Constitution so as to accept jurisdiction over Indians under this Act (R. 357). The significance of her failure to do so is shown by the legislative history of the Act contained in House Report appearing in 1953 U.S. Code, Cong. and Adm. News, Vol. 2, page 2412, the material part of which reads as follows:

> "Examination of the Federal statutes and State constitutions has revealed that enabling acts for eight states, and in consequence the constitutions of those states, contain express disclaimers of jurisdiction. Included are * * * New Mexico * * * Effect of the disclaimer of jurisdiction over Indian land within the borders of these States — in the absence of consent being given for future action to assume jurisdiction — is to retain exclusive Federal jurisdiction until Indian title in such lands is extinguished; such States could, under the bill as reported, proceed to amendment of their respective organic laws by proper amending procedure."

As may be seen, the viewpoint of Congress is that the effect of the reservation to Congress of absolute jurisdiction and control over Indian lands contained in Article XXI, Section 2, of the New Mexico Constitution, is to "retain exclusive Federal jurisdiction" over such lands until the Indian title is extinguished and, moreover, that such reservation of jurisdiction constitutes, in the words of the Act, a "legal impediment" to the assumption of state civil and criminal jurisdiction over Indians. It is

equally significant that the only jurisdiction which Congress, by the Act, is willing to give New Mexico, is Court jurisdiction over civil and criminal causes involving Indians, not general and unlimited jurisdiction such as would be required for the Village to annex the Pueblo lands.

Respondent submits that the Village lacked the power to annex Pueblo lands at the time of its purported annexation of the Pueblo lands in question, and that it will continue to lack the power to do so unless and until Congress enacts appropriate legislation granting New Mexico the requisite jurisdiction over Indian lands.

CONCLUSION

Respondent has argued that certiorari should be denied under three main points. These are:

I. No reviewable question is presented by the petition: Petitioner has sought to present two questions for review. In the first of these it assumes there has been a valid annexation of the Pueblo lands and then seeks to present the question whether, under these circumstances, it may tax respondent. Since the New Mexico Supreme Court held there had not been a valid annexation, it did not reach or decide this question, and the question is therefore nonreviewable.

In its second question for review petitioner seeks to present the question whether an annexation of the Pueblo lands for the purpose of taxing respondent is "prohibited by Federal law or vio es the Indians' rights of self government." Since the New Mexico Court held, as a matter of state law, that under the state annexation statute pursuant to which the Village attempted to annex the

Pueblo lands, the territory annexed becomes a part of the annexing municipality for all purposes, the question whether an annexation for less than all purposes would be valid, as a matter of federal law, is not open to review.

II. The decision of the New Mexico Court rests on an adequate and independent state ground: The holding by the New Mexico Court that to allow the Village to annex the Pueblo lands would infringe on the right of the Indians of the Pueblo to govern themselves, is based on the underlying principle of state law that two self-governing bodies of equal dignity, the Pueblo and the Village, functioning for the same purposes, the local government of the lands of their domains, cannot be permitted to have simultaneous jurisdiction and control within the same territory at the same time. The Village has no federal right to annex the Pueblo lands and its right to extend its boundaries rests on state law. The New Mexico Court has held, as a matter of state law, that the Village had no power to annex the Pueblo lands and this Court is bound by that decision.

III. The question of whether a state or its political subdivisions may annex Indian lands has heretofore been determined by this Court: In *Worcester vs. Georgia*, supra, this Court held that Georgia had no power to annex the Cherokee reservation. The attempt by the Village of Espanola to annex the Pueblo of Santa Clara lands in question is no different from the attempt by Georgia to annex the Cherokee lands, and the decision of the New Mexico Court that the Village had no power to annex such Pueblo lands is in accord with *Worcester*. In order to show that the decision of the New Mexico Court is in accord with other applicable decisions of this Court, as well as applicable Acts of Congress, respondent has

argued in response to the points relied on by petitioner. These are:

1. The decision of the New Mexico Court is in accord with the recent decision of this Court in *Williams vs. Lee*, supra, which reaffirmed the basic principles of *Worcester*. To allow the Village to annex and therefore to exercise general governmental authority over and within the Pueblo lands, in the form of a multitude of statutory municipal powers, would infringe upon the authority of the Pueblo government over the Pueblo domain, which authority this Court said in *Williams* it has consistently guarded against state infringement. This Court noted in *Williams* that Congress, by the Indian Reorganization Act, has sought to encourage Indian governments to become stronger and more highly organized, and this policy would be subverted by permitting a municipal government of no greater dignity to overrun the Pueblo government. *Howard vs. Commissioners*, supra, is distinguishable because the Pueblo is entirely different from and unrelated to the ordnance plant there involved. The Pueblo has never been and is not now a part of our federal-state system of government although, by virtue of their original tribal sovereignty, the Indians of the Pueblo are a sovereign self-governing political entity. The Pueblo is itself municipal in character and operates at the same municipal level of government as the Village. It is elementary that two municipal bodies cannot exercise the same general governmental authority over the same area. The Pueblo did not consent to the annexation and appeared in the state court as Amicus Curiae to oppose it.

2. The Buck Act does not apply because the Village is not a taxing authority having jurisdiction to levy a sales tax under Section 105(a) of the Act. Moreover, since

the Pueblo holds the fee simple title to its lands it is not a "Federal area" as defined in the Act.

3. The New Mexico Supreme Court has not held that the state has no jurisdiction over Indian lands for any purpose, but it has correctly held that in view of the reservation of absolute jurisdiction and control over Indian lands to Congress contained in the New Mexico Enabling Act and State Constitution, and in view of the rule of *Worcester*, even as modified by this Court, the state lacked the requisite jurisdiction to enable it to confer on the Village the power to annex the Pueblo lands involved.

4. The Act of August 15, 1953, and the House Report thereon appearing in the body of the brief, show that from the viewpoint of Congress the reservation to Congress of absolute jurisdiction and control over Indian lands contained in the New Mexico Constitution, constitutes a "legal impediment" not only to the assumption of state civil and criminal jurisdiction over Indians under the Act, but a fortiori, to the assumption of the general and unlimited jurisdiction which would be required for the Village to annex the Pueblo lands. The Village will have no such power unless Congress enacts legislation granting New Mexico the necessary jurisdiction over Indian lands.

Respectfully submitted,

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APPENDIX A

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

ITEM A. INDIAN REORGANIZATION ACT (WHEELER-HOWARD ACT), ACT OF JUNE 18, 1934, CHAPTER 576, SECTIONS 16, 18 and 19; 48 STAT. 987-988; 25 U.S.C., INDIANS, SECTIONS 476, 478 and 479.

Section 476. Organization of Indian tribes; constitution and bylaws; special election

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing

of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

Section 478. Acceptance of sections 461 to 479 optional

Sections * * * 476-478, and 479 of this title shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

Section 479. Definitions

The term "Indian" as used in sections * * * 476-478, and 479 of this title shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of said sections, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in said sections shall be construed to refer to any Indian tribe,

organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in said sections shall be construed to refer to Indians who have attained the age of twenty-one years.

ITEM B. ACT OF FEBRUARY 15, 1929, CHAPTER 216, 45 STAT. 1185, AS AMENDED BY ACT OF AUGUST 9, 1946, CHAPTER 930, 60 STAT. 962; 25 U.S.C., SECTION 231.

Section 231. Enforcement of state laws affecting health and education; entry of state employees on Indian lands.

The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application.

ITEM C. SECTION 14-6-11 NEW MEXICO STATUTES (1953 ANNOTATED): (LAWS 1903, CHAPTER 105, SECTION 1, AS AMENDED BY LAWS 1935, CHAPTER 53, SECTION 3, AND LAWS 1939, CHAPTER 204, SECTION 2.)

14-6-11. Petition for annexation by owners of territory contiguous to municipality — Duty of council or board — Resolution. — Whenever a petition asking for the annexation of contiguous territory to any city, town or village shall be presented to the city council of any city or board of trustees of any town or village, which petition is signed by owners of a majority of the number of acres in such contiguous territory sought to be annexed, accompanied by a survey and a plat of the contiguous territory sought to be annexed, it shall be the duty of the city council or board of trustees of any such city, town or village to whom said petition is so presented to express by resolution their consent or rejection to the annexation of such contiguous territory. In the event that such resolution shall consent to the annexation of such territory, a copy of the resolution, together with a copy of the plat of the territory so annexed, shall be filed in the office of the county clerk of the county in which said municipality is situate, and from and after such filing, the said contiguous territory shall be included in and a part of said municipality for all purposes.

ITEM D. ACT OF DECEMBER 22, 1858, 11 STAT. 374, CHAPTER V.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Pueblo land claims in the Ter-

ritory of New Mexico designated in the corrected lists as * * * K, Pueblo of Santa Clara * * * reported upon favorably by the surveyor-general of New Mexico, in his report of the thirtieth of September, eighteen hundred and fifty-six, to the Department of the Interior, * * * be, and they are hereby, confirmed; and the Commissioner of the Land-Office shall issue the necessary instructions for the survey of all of said claims, as recommended for confirmation by the said surveyor-general, and shall cause a patent to issue therefor as in ordinary cases to private individuals: Provided, That this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights, should such exist.